IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL.

Appeal from Order No. 111 of 2003

National Insurance Company Ltd.
Through its Divisional Manager
Divisional Office
5/222 Canal Road
Tikonia Haldwani
District Nainital ... Appellant

Vs

1. Ramesh Saklani S/o Sri Bihari Lal Saklani
2. Master Ankit minor
   S/o Ramesh Saklani
   Through its natural guardian
   And father Ramesh Saklani
   Both R/o Ram Nagar Danda (Thana)
   District Dehradun
3. M/s Deepa Computers Firms Private Limited
   B-2 Sector II
   Noida (U.P.)
4. Sri Janarden Patel
   S/o Sri Marai Patel
   C/o Deepa Computers Firms Private Limited
   Noida (U.P.) ... Respondents

Sri B.D. Pande holding brief of Sri B.K. Gupta, learned counsel for the appellant
Sri Pradeep Haria holding brief of Sri Manoj Tiwari, learned counsel for the respondents

Hon'ble B.C. Kandpal, J.

This appeal has been preferred under Section 173 of the Motor Vehicle Act, 1988 ***(in short the Act)*** against the judgment and Award, dated 21.02.2003, passed in M.A.C. T. Petition No. 153 of 2001, Ramesh Saklani & another Vs. M/s Deepee Computer Firm Pvt. Ltd. and others, by the Motor Accident Claims Tribunal/Additional District Judge, III F.T.C. Dehradun ***(hereinafter referred to as the Tribunal)***, whereby the learned Tribunal has awarded a sum of Rs. 60,000/- along with simple interest @ 9% per annum in favour of the claimant-respondent no. 1 and 2 as against the Opposite Party No. 3 –appellant. Aggrieved, the Insurance

Company has come up in appeal with a prayer to set aside the impugned judgment and award mainly on the ground that the claim petition has been filed by the claimant in collusion with the owner of the vehicle, and on the ground of validity of driving licence of the driver of the truck in question and that of Maruti Car No. DL 3 CM-7564 as well as on the point of the quantum of compensation.

Brief facts of the case are that Ram lal (***the deceased***) was driving Maruti Car No. DL-3CM-7564 on 03.06.2001 from Dehradun to Delhi. When the said vehicle reached near village Barla of district Muzaffarnagar, a Tata 608 Truck No. UP-14-C-0802 driven rashly and negligently by its driver his the said Maruti Car with the result all the occupants of the car including the driver, the deceased, sustained grievous injuries. The deceased – Ms. Anjali was rushed to District Hospital Muzaffarnagar, where she was declared dead. It has been alleged that the Maruti Car was being driven in moderate speed, carefully and cautiously by the deceased. All the Opposite Parties contested the claim petition by filing separate written statements. O.P.No.3-appellant has denied all the allegations and contended that the claim petition has been filed by the claimants in collusion with O.P.Nos. 1 and 2, the owner and driver of the vehicle, i.e. Truck in question. The accident was not the result of rash and negligent driving by the driver of the offending truck and the driver was not holding a valid driving licence. It has also been asserted that the Insurance Company has a right to defend the case on the grounds enumerated under Section 149(2) of the Act.

On the pleadings of the parties, the Tribunal has framed as many as seven Issues in the case. The learned

Tribunal has recorded a finding that the accident in question had occurred due to rash and negligent driving of the offending truck and not as a result of rashness and negligence on the part of the deceased. It has been held by the Tribunal that the licence possessed by the truck driver was a valid driving licence. The Tribunal found that the truck involved in the accident was duly insured. The Tribunal has also found that the age of the deceased was about 6 years and was earning nothing rather the claimants were spending for her livlihood. Ultimately, by the impugned judgment and award, the claim petition has been decreed for a sum of Rs. 60,000/- along with interest @ 9% per annum from the date of filing of the petition in favour of the claimants against the O.P.Nos. 1 and 3, along with interest as mentioned earlier.

Heard Sri B.D. Pande holding brief of Sri B.K. Gupta, learned counsel for the appellant/Insurance Company, Sri Pradeep Haria holding brief of Sri Manoj Tiwari, learned counsel for the claimant-respondent nos. 1 to 3 and perused the entire material available on record.

It has been vehemently argued on behalf of the appellant that in the present case, there was collusion between the owner and driver of the truck in question and the claimants, hence ground to take defence under Section 170 of the Act is available to the insurer and that the driver of the offending Truck was not holding a valid driving licence, rather he was holding a fake driving licence, therefore, it leads to breach of policy condition and the Insurance Company is not responsible to pay compensation in the circumstances of the case. I have considered the argument advanced on behalf of the Insurance Company in the light of the evidence on record as well as the settled law on the point.

So far as the ground under Section 170 of the Act is concerned, it is now well settled law that unless specific permission is granted to the Company by the Tribunal, the grounds of challenge cannot be enlarged beyond the scope of Section 149(2) of the Act. The provisions of the Act in this regard were elaborately discussed by the Hon'ble Apex Court in case of ***"United India Insurance Co. Ltd. vs Jyotsnaben Sudhirbhai Patel and others" [(2003) 7 Supreme Court Cases, 212]***. The Hon'ble Apex Court has observed in paragraph no. 13 that ***"the insurance company can contest the claim preferred before the Tribunal only on the statutory grounds prescribed under Section 149(2) of the Act, but, if there is a collusion between the person making the claim and the person resisting the claim or if the person against whom the claim is made has failed to contest the claim, the insurance company can step in and seek permission of the Tribunal and make a prayer for getting itself impleaded as a party to the proceeding and the insurer so impleaded can then contest the proceeding on grounds other than the grounds enumerated in sub-section (2) of Section 149 of the Act. This is an enabling provision in the event of a collusion between the claimant and the insured or the tortfeasor."*** In the instant case, no such finding has been recorded by the Tribunal showing collusion between insured and the claimants, nor specific permission has been granted under Section 170 of the Act, therefore, in view of the settled law, the contention of the appellant falls to the ground.

For far as the contention of the appellant that the driver of the offending was holding a fake driving licence is concerned, I am of the consistent view that even on this count

the Insurance Company cannot be absolved from its liability to make the payment of the compensation. I am fortified in my view by the verdict of the Apex Court in the case of ***"National Insurance Company Limited Vs. Swaran Singh and others" [2004(3) Supreme Court Cases, 297]***. In this case, the Apex Court in the summary of findings in paragraph no.110 (vii) has observed that ***"the question as to whether the owner has taken reasonable care to find out as to whether the driving licence produced by the driver, (a fake one or otherwise), does not fulfil the requirements of law or not will have to be determined in each case."*** The Tribunal has held in the present case that the driver of the offending truck was holding a valid driving licence. It has been urged that the finding on the point of validity of driving licence is not categorical and well discussed. Considering the entire material before us, I am of the opinion that in the facts and circumstances of the case, and in the light of the guidelines formulated by the Hon'ble Apex Court in the case of ***Swaran Singh (supra)***, I direct the appellant first to satisfy the entire amount of compensation, as decreed by the learned Tribunal, and then to file its objections before the executing court/the Tribunal, if it so desires, for determination of the dispute that the driver of the Truck No. UP-14C-0802 was not holding a valid driving licence, therefore, the insurance company is entitled to get the amount of compensation reimbursed by the insured, i.e. O.P.-respondent no.4. The Tribunal after affording opportunity of hearing to the insurance company and the owner of the truck in question, shall decide the point in accordance with the provisions of the Act.

So far as the point challenging the quantum of award is concerned, it is not open to the appellant to raise this

contention in view of the Apex Court judgment in the Case of ***"National Insurance Company Ltd. Chandigarh Vs. Nicolletta Rohtagi and others" [(2002) 7, Supreme Court Cases, 456]***. In that case, it has been observed by the Apex Court that "*even if no appeal is preferred under Section 173 of 1988 Act by an insured against the award of a Tribunal, it is not permissible for an insurer to file an appeal questioning the quantum of compensation as well as findings as regard negligence or contributory negligence of the offending vehicle".* Thus, in view of the law laid down by the Apex Court reported in ***(2002)7, S.C.C. 456 (supra)***, which is fully applicable in the present appeal, therefore, the contention raised on behalf of the appellant is not tenable and has to be ignored outright.

With the aforesaid observations, the appeal is disposed of finally. No order as to costs.

The amount in deposit with this Court be remitted to the Motor Accident Claims Tribunal concerned, for being paid to the claimants.

(B.C. Kandpal, J.)

05.12.2006
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